

**iBasis, Inc.
20 Second Avenue
Burlington, MA 01803**

November 24, 2004

By Electronic Filing:

Marlene H. Dortch
Secretary
U.S. Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

RE: iBasis, Inc. Updated Submission in CC Docket No. 96-128
Addressing C.F.R. Section 64.1300 et. seq (inter alia, Requirement
to File System Audit Report) (the “Rules”)

Dear Secretary Dortch:

In conjunction with our June 30, 2004 submission, iBasis, Inc. is providing an update on our compliance with the Rules, with specific reference to our retail and wholesale businesses and our continuing reservation of rights with respect to our Internet telephony offerings.

I. iBasis’ Retail Prepaid Calling Card Offering

A. Identification of Calls. In the case of iBasis’ retail business, iBasis receives information sufficient to identify toll-free payphone originated calls. With respect to such calls, a basic and typical call path would be as follows:

- An end user customer originates an international call from a payphone through the use of a calling card issued by an iBasis distributor (by dialing a toll-free access number); then
- The LEC serving that payphone routes the call to the entity to which that toll-free number is assigned – what is known as a Responsible Organization or Resp-Org (iBasis will have contracted with the Resp-Org to maintain the toll-

free number on iBasis' behalf and iBasis receives information sufficient from the Resp-Org to identify toll-free payphone calls); then

- iBasis, through whatever interconnection arrangement is in place, takes the call from the Resp-Org's location to one of iBasis' international Internet telephony Gateways; then
- iBasis transports the call over the Internet to a terminating carrier or service partner in the foreign destination country.

B. iBasis' Role in Utilizing Payphone Services. iBasis has, as a matter of practice, voluntarily paid payphone compensation related to its retail business. This is because iBasis, by contract through its distributor relationships, is directly involved with debiting user accounts to cover the cost of such compensation. Unlike iBasis' wholesale Internet telephony business, discussed below, the involvement of other entities such as the originating LEC or Resp-Org that maintains our toll-free numbers is only incidental. Of course, iBasis does not waive any of its rights regarding legal responsibility for payphone compensation, but until such time as the law is clarified it will continue to remit payphone compensation related to its retail business.

C. Procedures to Track and Remit. iBasis has systems in place that are adequate to track and remit payphone compensation related to its retail business. A draft of our internal procedures is attached. In addition, iBasis has contracted Billing Concepts, Inc. ("BCI") to process payphone data and remit payment to payphone service providers ("PSPs"), on iBasis' behalf. BCI has filed a comprehensive Systems Audit Report of its own with the Commission, and we have reviewed the associated SAS 70, which confirms BCI's ability to perform the required services on our behalf. Moreover, in discussions with representatives for PSPs, iBasis has been informed that its use of BCI provides payphone owners with adequate assurances that payphone compensation will be properly remitted. BCI will be compensating PSPs starting with iBasis' July 1 – September 30, 2004 obligations.

D. Systems Audit. For the required System Audit Report, iBasis has consulted multiple auditors to perform such report, and has contracted to have a finalized audit after our July 1 – September 30, 2004 cycle is completed.

E. Updated Contact Information. Persons responsible for handling payphone compensation and for resolving disputes with payphone service providers are:

Initial contact:

Peggy Gaitan
Billing Concepts, Inc.
7411 John Smith Drive
Suite 200
San Antonio, TX 78229

Tel: 210-949-7109
peggy.gaitan@billingconcepts.com

Escalation contact:

Bradford Guth
Senior Director, Financial Operations and Analysis
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bguth@ibasis.net

II. iBasis' Wholesale Business

A. Inability to Identify Calls. Although a variety of different scenarios may apply depending on the call and iBasis' relationship with its carrier customers, we provide a basic description of iBasis' wholesale business, specifically, the circumstances in which iBasis acts as a transport provider. With respect to calls originated from payphones, a basic call path could be as follows:

- An end user customer of a facilities-based interexchange carrier ("FB-IXC") originates an international call from a payphone (through the use of a calling card issued by such FB-IXC, by dialing a toll-free access number); then
- The local exchange carrier ("LEC") serving that payphone will route the call to the FB-IXC; then
- The FB-IXC platform answers the call, at which time a "connect" message is sent back to the originating LEC central office. The FB-IXC authenticates the caller and authorizes the call. Once the caller enters a destination number, the FB-IXC routes the call to one of iBasis' international Internet telephony Gateways. The FB-IXC passes no information regarding the origination point of the call, whether it be ANI, payphone NXXs, or other information; then
- iBasis transports the call over the Internet to a terminating carrier or service partner in the foreign destination country.

B. iBasis' Limited Role in Utilizing Payphone Services. As described above, with respect to its wholesale business, iBasis is exclusively a transport provider. iBasis' role is limited to delivering calls over the Internet to an international destination, and enters into agreements with carriers to enable those carriers to transmit international calls.

C. iBasis is Not the Primary Economic Beneficiary. Since the first payphone order was issued in 1996, the Commission has consistently maintained that the “the primary economic beneficiary of payphone calls should compensate the PSPs.”¹ In its wholesale business, iBasis has no involvement in, much less does it benefit from, the terms and conditions relating to retail services offerings by our customers to their end users. In addition, the Commission recognized that certain entities did not have the ability to track calls, so “[i]n the interests of lower costs and administrative convenience, the Commission placed the responsibility on the entity with control over the tracking data . . .”² Although the specific entity responsible for payphone compensation has changed over time (with the Commission most recently declaring that the “Completing Carrier” or “Switched-Based Reseller is responsible), the Commission’s fundamental policy of imposing payphone compensation on the primary economic beneficiary of payphone calls, and the entity that is best able to track payphone data, has never changed.

Accordingly, iBasis interprets the *Payphone Order* and the *Order on Reconsideration* in the reasonable and logical way as it pertains to iBasis wholesale transport business, *i.e.* to the extent that payphone compensation is due on a call where another entity is (or should be) charging end users for the payphone compensation and iBasis is a wholesale transport provider, iBasis is not a Completing Carrier, but rather its carrier customers are.

D. Alternative Steps to Ensuring Payphone Compensation. iBasis is taking steps to ensure that payphone compensation is being paid in the context of its wholesale business. Specifically, iBasis is entering contract amendment negotiations with its carrier customers, pursuant to which such customers will specifically acknowledge and agree, for example, that they are the primary economic beneficiary of payphone originated calls and, as between the parties, will be responsible for payphone compensation even when they use iBasis for international Internet telephony wholesale transport. In addition, iBasis has engaged in conversation with counsel for some of the nations’ largest payphone owner coalitions to discuss technical and operational issues associated with payphone compensation in the international Internet telephony wholesale transport context with the goal that PSPs be compensated.

¹ *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-388, Report and Order, 11 F.C.C. Rcd. 20541 (1996) (the “*First Payphone Order*”).

² *Id.* at 20586, ¶ 86.

III. The FCC's Rules Are Ambiguous as to the Obligations of Internet Telephony Providers

In its October 3, 2003 payphone order (the "*Payphone Order*")³ and its October 22, 2004 order on reconsideration (the "*Order on Reconsideration*"),⁴ the FCC declared that the "last switched-based long distance carrier is always liable for compensation"⁵ (last switched-based long distance carrier is also referred to by the FCC as the "Completing Carrier"). A switch-based long distance carrier is defined tautologically as a "carrier that switches long distance traffic using a switch that it owns or leases."⁶ Significant unresolved questions of law exist as to the application of these rules in the Internet telephony context. For example, the law is ambiguous as to the following:

- Whether Internet telephony providers are "carriers" for the purposes of the payphone compensation rules, which impose liability on "Completing Carriers";
- Whether IP-based gateway routing equipment constitutes a "switch" for the purposes of the payphone compensation rules, which impose payphone compensation liability on "last switched-based long distance carrier";
- Whether wholesale Internet telephony transport service providers are subject to payphone compensation; and
- Whether the presence of IP-based gateway routing equipment alters the analysis of which entity is in the best position to track and pay payphone compensation.

IV. Conclusion

The objective of the Commission's payphone compensation rules is to ensure that payphone owners are compensated, and to ensure that the primary economic beneficiary of a payphone call, and the entity that is able to track compensable calls, be responsible for such payment. iBasis submits that its approach to payphone compensation is consistent with the Commission's objectives.

³ *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-128, Report and Order, 18 F.C.C. Rcd. 19975, (2003) (the "*Payphone Order*").

⁴ *The Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Reconsideration, CC Docket No. 96-128 (rel. Oct. 22, 2004) (the "*Order on Reconsideration*").

⁵ *Order on Reconsideration* at ¶12; see also 47 C.F.R. § 64.1300(a).

⁶ *Payphone Order* at ¶1, FN1.

Marlene H. Dortch
November 24, 2004
Page 6

I can be reached at the above address, at 781-505-7955, or jdraluck@ibasis.net.

Respectfully submitted,

/ s /

Jonathan Draluck
Vice President Business Affairs
& General Counsel

Attachment

iBasis, Inc. Payphone Compensation Audit Program Plan of Action (draft 10/04)

These procedures are designed to ensure that with respect to payphone compensation and the required System Audit Report, iBasis complies with each of the following criteria:

- iBasis' procedures accurately reflect the Commission's Rules;
- iBasis has a person or persons responsible for tracking, compensating, and resolving disputes concerning payphone completed calls;
- iBasis has effective data monitoring procedures;
- iBasis adheres to established protocols to ensure that any software, personnel or any other network changes do not adversely affect its payphone call tracking ability;
- iBasis has created a compensable payphone call file by matching call detail records against payphone identifiers;
- iBasis has procedures to incorporate call data into required reports;
- iBasis has implemented procedures and controls needed to resolve disputes;
- That the independent third-party auditor can test all critical controls and procedures to verify that errors are insubstantial; and
- iBasis has adequate and effective business rules for implementing and paying payphone compensation, including rules used to:
 - identify calls originated from payphones;
 - identify compensable payphone calls;
 - identify incomplete or otherwise noncompensable calls; and
 - determine the identities of the PSPs to which iBasis owes compensation.

Payphone Compensation Procedures

All calls on the iBasis network are captured in logs and call detail records are produced containing information of the call times, calling IDs and call status. Call detail records are collected hourly and loaded into the call detail database. The data is retained in a database with reference data needed for describing the calls.

Call Detail is stored on line for one year and archived off line for 3 years.

A monthly procedure is executed to extract all payphone call detail records.

The procedure selects all Toll Free Payphone calls for each reporting period where the CDR start date is within selected month and OLI Code = 25 and the call duration > 0.

The procedure then matches 800 Access Number to Circuit Provider using the iBasis access number database.

The compensation file is produced containing:

| Field Name | Position | Length | Description |
|------------------------------|----------|--------|---|
| RecordID | 1 | 2 | "CD" |
| ANI | 3 | 10 | Payphone ANI |
| Access Code/Number | 13 | 10 | Toll free DID, 800 (8xx, 9xx) access number |
| CIC/Account #/ Identifier | 23 | 20 | Circuit Provider Code; alpha/number field; Right justified |
| Call Date | 43 | 8 | Start Date of Call, format yyymmdd |
| Call Time | 51 | 6 | Start Time of the Call Format: hhmmss |
| Call Duration | 57 | 6 | Length of call in seconds (zero filled - right justified) From second call starts on gateway to disconnect |
| For Customer Use | 63 | 22 | Unique data for iBasis, not yet defined |

The process produces monthly compensation files for the payphone clearinghouse, BCI, IBS_calls_ymm.txt. The file is forwarded to an FTP Site, EXPOS FTP server at address <ftp://expos.billingconcepts.com/>.

BCI receives files from PSPs containing Payphone ANIs. It also receives transfer files from 800 number providers. ANIs are validated and matched, and files are then transferred to PSPs.

BCI produces quarterly reports of compensable calls by Circuit Provider and PSP. The compensation amount for the Payphone Service providers is a fixed rate per call. On September 27, the rate changed from \$.24 to \$.494 .

BCI will remit quarterly payments to Payphone Providers and bill iBasis for compensable calls reported

Identification of Transfer Carriers

The carrier that transferred the toll free payphone calls to iBasis must be identified. These carriers are identified by Carrier Identification code, CIC. Current codes include:

| Carrier | CIC |
|-----------------|------|
| Global Crossing | 0444 |
| MCI | 0222 |
| Qwest | 0432 |
| Callipso | None |

Qwest CIC code is: 0432

Qwest uses MCI CIC 0222 in Alaska, USVI, and Puerto Rico

Qwest uses MCI CIC 0222 for the following LATAs:

921- Fisher's Island, NY and portions of Montana:

406.275

406.528

406.675

406.676

406.741

Callipso does not have its own CIC code.

Callipso has told us this entry may be blank when reporting as there is other information included on the form that identifies them.

The following file will accompany the compensation file to identify the carriers that transferred the payphone calls to iBasis:

| Field Name | Position | Length | Description |
|----------------------|-----------------|---------------|--|
| RecordID | 1 | 3 | BC ID - ID provided by BC |
| Account #/Identifier | 4 | 20 | CIC number for the transferring Carrier Format, alpha/number field: right justified |
| Company Name | 24 | 40 | Company name corresponding to the Account #/Identifier in position 4 |
| Address1 | 64 | 25 | Address1 corresponding to the Account #/Identifier in Position 4. |
| Address2 | 89 | 25 | Address2 corresponding to the Account #/Identifier in Position 4. |
| City | 114 | 15 | City corresponding to the Account #/Identifier in Position 4. |
| State | 129 | 2 | State corresponding to the Account #/Identifier in Position 4. |
| Zip | 131 | 9 | Zip corresponding to the Account #/Identifier in Position 4. |
| Telephone Number | 140 | 10 | Contact telephone number corresponding to the Account #/Identifier in Position 4. |
| Contact Name | 150 | 40 | Contact name corresponding to the Account#/Identifier in Position 4. |